

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.37233 of 2012

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief/s:-

“....to issue an appropriate writ or order or orders or direction more particularly one in the nature of writ of Mandamus declaring the impugned proceedings vide Rc.No.43/1/LIG/MVP/FI, dt. 05.11.2012 and a consequential order vide Plot no. LIG-43/Sec-I/MVP/F1, dt. 20.10.2012 as illegal, arbitrary, contrary to law and in violation of Articles 14, 21 and 300-A of Constitution of India and set aside the same and further consequently direct the respondent to register immediately subject to litigation at the Hon'ble Court at Visakhapatnam the plot LIG 43, located in Sector no.I of MV Palem layout, Visakhapatnam to an extent of 253.61 sq.vds in favour of the petitioner as per the terms of consent vide Rc.No. LIG-43/1./MVP/95/EM.II, dt. 01.01.1996 and further to pass such order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.””

(Reproduced Verbatim)

2. I have heard the submissions of the learned Senior Counsel for the writ petitioner and the learned standing counsel for the sole respondent/VUDA. I have perused the material record.

3. The case of the writ petitioner, as set out in the writ petition and as per the submissions made at hearing, in brief, is as follows:-

“The respondent had issued a notification on 14.09.1995 proposing to sell/allot plots for consideration in various lay outs made by the respondent within the Visakhapatnam city/Urban areas. The process of inviting sealed quotations-cum-auction was adopted for allotment/sale of plots in various lay outs made by the respondent including the layout at M.V. Palem of Visakhapatnam. The writ petitioner had submitted a sealed quotation dated 25.09.1995, having made a deposit of Rs.10,000/- towards earnest money. On the acceptance of the quotation of the writ petitioner by the respondent for a plot in serial no.LIG-43 located at Sector no.1 of M.V. Palem lay out at the rate of Rs.2,052/- per square yard, the respondent had issued proceedings dated 01.01.1996 stating that the offer of the writ petitioner was tentatively accepted subject to payment of full cost of the land within the stipulated time and observance of all conditions mentioned in the application and the form

annexed thereto. Having worked out the cost of the plot of an extent of 253.61 square yards at an amount of Rs.5,20,468/- including the lease rent of Rs.60/-, the petitioner was directed by the respondent to pay the said amount by way of demand draft drawn in favour of the respondent as per the schedule that was determined/fixed. Accordingly, the respondent had addressed a letter dated 01.01.1996 to the petitioner. Having not been able to pay 70% of the cost of the plot within the stipulated time, the writ petitioner had sought extension of time for payment of the said amount by a letter dated 08.02.1996. Having accepted the said request, the respondent had granted extension of time for payment of the balance amount of cost till 09.03.1996, subject to the condition that the same is payable with interest at the rate of 18% per annum. The writ petitioner had made the payment of the balance cost amount by 09.03.1996 with interest. As there was no communication in regard to the registration of the plot in his favour, the petitioner had made a representation to the respondent by letter dated 01.08.1996 for registration of the plot in his name. In response thereto, the respondent had sent a letter dated 12.08.1996 stating *inter alia* that a litigation is pending with regard to the subject plot and that it is confident that at an early date the result of the Court litigation will come in favour of the respondent and that therefore, the petitioner may wait for some time. Then the petitioner had made a representation to the respondent by letter dated 31.10.1996 to refund the entire amount with interest by withholding the earnest money deposit to enable him to pay the cost of the plot after disposal of the Court case. Having obtained a legal opinion, the respondent had refunded/repaid to the petitioner the cost of the plot, i.e., Rs.5,10,468/- without interest by withholding the earnest money deposit. The request for payment of interest was not considered by the respondent; and, by the proceedings dated 10.01.1997, the petitioner was informed that the plot will be registered in his favour after the subject plot is cleared from the Court litigation. After the Court litigation has come to an end with the disposal of S.A.No.106 of 2006 by this Court, the writ petitioner had again made a representation dated 25.01.2010 to the respondent requesting to register the plot in his name. The said representation was rejected by the respondent by a letter dated 09.03.2010

informing the petitioner that his case was examined in detail and that it was decided to allot the subject plot to the petitioner at Rs.28,000/- per square yard subject to the confirmation of the actual extent as per the ground position. Further, a notarised undertaking affidavit to that effect was also sought from the petitioner requiring him to undertake that he would not resort to any litigation against VUDA on such re-allotment of the subject plot. Further, arbitrary conditions were also mentioned in the said letter/proceeding. In the said circumstances, the petitioner had filed W.P.No.6437 of 2010 before this Court and the said writ petition was allowed by this Court directing the respondent herein to execute the sale deed in favour of the petitioner for plot in question on payment of the original sale consideration, i.e., Rs.5,10,468/- within four weeks from the date of receipt of a copy of the said order, however, with interest at the rate of 12% per annum from 10.01.1997 till the date of deposit of the said amount. It was further ordered that if the petitioner fails to so deposit the said amount with interest within four weeks from the date of the receipt of a copy of the said order, he shall not be entitled to reap the benefit of the said order. After the said writ orders, the petitioner had made a representation dated 15.04.2011 for re-allotment of the plot in question to him after obtaining two demand drafts viz., (i) demand draft bearing no.521953 for an amount of Rs.6,83,871/- dated 13.04.2011 drawn on Andhra Bank; and (ii) demand draft bearing no.554258 for an amount of Rs.7,00,000/- dated 13.04.2011 drawn on Andhra Bank respectively. The petitioner had submitted the photostat copies of the said demand drafts along with representation, as the respondent had refused to accede to receive the original demand drafts and had asked him to submit the original drafts immediately after obtaining the order of re-allotment. Subsequently, when the petitioner had approached the office of the respondent to find out as to why the original demand drafts were not being accepted, he was informed that the said demand drafts cannot be accepted as two civil suits in O.S.No.221 of 2010 on the file of the Court of the learned VI Additional District Judge and O.S.No.937 of 2010 on the file of the Court of the learned IV Additional Civil Judge at Visakhapatnam are pending in respect of the subject plot. As the two cases were pending, the petitioner was

also informed that the delay in payment would be condoned by the Vice Chairman even though the time prescribed by this Court in the writ order had elapsed. In spite of several representations dated 15.04.2010, 13.06.2011, 23.11.2011 and 13.04.2012 made by the petitioner for re-allotment of the plot, no action was taken. Hence, the petitioner had filed a contempt case in C.C.No.413 of 2012 against the respondent before this Court for non-compliance of the orders of this Court in W.P.No.6437 of 2010. The said contempt case was withdrawn by the petitioner upon the request of the respondent and on assurance that steps would be taken for re-allotment of the subject plot to the petitioner. The petitioner had withdrawn the contempt case having addressed a letter dated 19.04.2012 expressing his willingness to withdraw the contempt case. Subsequently, the contempt case was closed. The respondent had again addressed a letter dated 20.04.2012 stating that there are two civil suits in O.S.No.221 of 2010 on the file of the Court of the learned VI Additional District Judge and O.S.No.937 of 2010 on the file of the Court of the learned IV Additional Civil Judge at Visakhapatnam, pending in respect of the subject property and that his case will be considered after the disposal of the above mentioned civil suits. The above two civil suits were filed by the plaintiffs in the said suits in collusion with the party who had already filed the second appeal in S.A.No.106 of 2006 before this Court. The writ petitioner then submitted a representation along with two cheques for the required amount requesting to consider his case. Contrary to the contents of the earlier letter dated 20.04.2012, the respondents had addressed letters dated 20.10.2012 and 05.10.2012 stating that the petitioner had failed to comply with the orders passed by this Court in W.P.No.6437 of 2010 and had returned the cheques of the petitioner along with their cheque for Rs.10,000/- towards refund of the original earnest money deposit. Having not accepted the said cheque, the petitioner had requested the respondent to adhere to its words in the letter dated 01.01.1996 and 20.04.2012. The petitioner who is of 59 years of age had paid the cost amount of the plot after obtaining loans from his relatives and friends with the fond hope that the respondent by accepting the original price would register the subject plot in his name and that he would be able to construct a small

residential house in the said plot. In spite of the orders of this Court, the respondent had failed to register the subject plot in the name of the petitioner by receiving the cheques issued towards the original cost amount. The respondent had returned the cheques with an intention to register the same in favour of some third parties. Having no alternative, the petitioner is constrained to file the present writ petition.”

4. The averments in the counter affidavit of the respondent, in brief, are as follows:-

“The material allegations in the writ petition are false. The Second Appeal in S.A.No.106 of 2006 was disposed of in favour of the respondent on 08.08.2009. Further two civil suits were filed. The said suits are pending. The said fact was informed to the petitioner by a letter dated 20.04.2012. It is true that the writ petition in W.P.No.6437 of 2010 was allowed and that the respondent therein was directed to execute a sale deed for the plot in question in favour of the petitioner on payment of the original sale consideration, i.e., Rs.5,10,468/- with interest at the rate of 12% per annum from 10.01.1997 till the date of deposit. In the said writ petition, orders were also passed that if the petitioner fails to deposit the amount within four weeks from the date of the receipt of a copy of the said order, he shall not be entitled to reap the benefit under the said order. The petitioner is trying to show to the Court that he has deposited the amount within the aforementioned time allowed by this Court; but, he has not deposited the amount within the time granted by this Court in the orders in W.P.No.6437 of 2010. Without depositing the amount, the petitioner had filed a contempt case in C.C.No.413 of 2012 complaining non-compliance of the orders of this Court in W.P.No.6437 of 2010. Then, the respondent was directed to appear in-person before this Court to answer the complaint in regard to the non compliance of the orders of this Court in W.P.No.6437 of 2010; but, in the meantime, the petitioner had withdrawn the contempt case. The respondent had addressed a reply letter dated 20.04.2012 to the petitioner’s letter dated

19.04.2012 stating that there are two civil suits pending in respect of the subject plot and hence, the orders of this Court could not be complied with and the case of the petitioner will be considered after the disposal of the above mentioned two civil suits. Since the petitioner had not deposited the amount within the stipulated time of four weeks, the amount paid by him was returned along with earnest money deposit of Rs.10,000/- available with the respondent. Till the disposal of the two civil suits, the registration of the plots in favour of the petitioner is not possible. In view of the pendency of the two civil suits and also failure on the part of the petitioner to pay or deposit amount within four weeks time allowed by this Court in W.P.No.6437 of 2010, the writ petition is liable to be dismissed.”

5. At the time of hearing, learned counsel for both the sides made submissions in-line with their respective pleaded cases stated supra in detail.

6. I have perused the material papers filed along with the writ petition.

7. From the pleadings of the parties and the submissions made, the facts that emerge for consideration may be summed up as follows: After following the due procedure that was required to be followed, the subject plot was allotted tentatively to the petitioner at a cost of Rs.5,10,468/- including the lease rent amount of Rs.60/-. The petitioner, by a letter dated 01.01.1996 of the respondent, was directed to pay the cost of the plot by way of demand drafts in favour of the respondent as per the schedule stated in the said letter. The final instalment of 70% was not paid within time by the petitioner; but, the said instalment was paid with interest within the extended time granted by the respondent to the petitioner. Thus, the entire cost of the plot was paid by the petitioner initially to the respondent. When the petitioner had addressed a letter dated 01.08.1996 requesting the respondent to execute and register the sale deed in respect of the subject plot, the respondent, by its letter dated 12.08.1996, informed the petitioner that the sale deed cannot be executed since a civil litigation is pending in the Court in respect of the subject plot. Further, the petitioner was asked to wait for some time on the expectation that the litigation would end in favour of the respondent at an early date.

Therefore, on 31.10.1996, the petitioner had made a representation to the respondent requesting to refund the sale consideration with interest while offering that the respondent can withhold the earnest money deposit and also stating that in case the litigation in respect of the subject plot ends in favour of the respondent, the petitioner would deposit the sale consideration once again. Having accepted the said proposal of the petitioner, the respondent had refunded an amount of Rs.5,10,468/- to the petitioner without any interest; but, had withheld the earnest money deposit of Rs.10,000/-. After the litigation had come to an end with the disposal of the second appeal in S.A.No.106 of 2006 by this Court and on coming to know of the same, the petitioner had made a representation to the respondent requesting to execute the sale deed in respect of the subject plot in his favour. However, the respondent, by letter dated 09.03.2010, informed the petitioner that his case was examined in detail and that it was decided to allot the subject plot subject to the confirmation of the actual extent as per the ground position at Rs.28,000/- per square yard; and, a notarised undertaking affidavit to that effect was also sought from the petitioner. The petitioner was asked to undertake in that affidavit to be submitted by him that he would not resort to any litigation against VUDA on re-allotment of the subject plot as stated. Feeling aggrieved, the petitioner had filed W.P.No.6437 of 2010 before this Court. On merits, this Court, while allowing the writ petition, directed the respondent to execute the sale deed in favour of the petitioner in respect of the plot in question on payment of the original sale consideration, i.e., Rs.5,10,468/- with interest at the rate of 12% per annum from 10.01.1997 till the date of deposit and had further ordered that on failure of the petitioner to so deposit the amount within four weeks from the date of the receipt of a copy of the said order, the petitioner would not be entitled to reap the benefit of the said order. The writ petition was accordingly disposed of on 03.03.2011.'

8. In this backdrop of facts of the case, the question that requires to be examined is as to whether the petitioner had complied with the aforementioned orders of this Court and has become entitled to reap the benefits of the said order. As per the material record, the petitioner had

obtained two demand drafts viz., (i) demand draft bearing no.521953 for an amount of Rs.6,83,871/- dated 13.04.2011 drawn on Andhra Bank; and (ii) demand draft bearing no.554258 for an amount of Rs.7,00,000/- dated 13.04.2011 drawn on Andhra Bank respectively. But, the question is as to whether he had delivered the said drafts to the respondent within the time allowed by this Court in the aforementioned orders. In this regard, it is necessary to reproduce the operation portion of the order dated 03.03.2011 of this Court in W.P.No.6437 of 2010, which reads as under:

“Therefore, the writ petition is allowed and the respondent is directed to execute the sale deed in favour of the petitioner for the plot in question on payment of original sale consideration, i.e., Rs.5,10,468/- with interest at 12% per annum from 10.1.1997 till the date of deposit of the amount. If the petitioner fails to deposit the amount within four weeks from the date of receipt of a copy of this order, he shall not be entitled to reap the benefit under this order. There shall be no order as to costs.”

The petitioner is required to make the deposit as per the aforementioned orders within four weeks from the date of receipt of the copy of the order. Nowhere in the petition, the petitioner had pleaded as to when he had received the certified copy of the order in W.P.No.6437 of 2010 or a copy of the same on payment of usual charges. However, during the course of hearing, it is submitted that a copy of the said order of this Court in W.P.No.6437 of 2010 was received on 18.03.2011 and therefore, the drafts were taken within four weeks time allowed by this Court. Be that as it may. Admittedly, the petitioner had not tendered the original drafts to VUDA/the respondent along with his representation. On this aspect, the petitioner's case is that when he had tendered the original demand drafts, he was asked by the respondent to give the Photostat copies of the drafts only and that he was advised to submit the original drafts immediately after getting the order of re-allotment and that when he had subsequently approached the respondent to know the reason for non-acceptance of the original drafts he was informed that two fresh civil suits in O.S.No.221 of 2010 on the file of the learned VI Additional District Judge and O.S.No.937 of 2010 on the file of the learned IV Additional Civil Judge at Visakhapatnam are pending in respect of the subject property. The further case of the petitioner is that he was also

informed that the delay in payment would be condoned by the Vice Chairman even though the time prescribed by this Court is over as there were two civil cases pending. Thus, the fact that remains is that the petitioner had not delivered the demand drafts obtained by him to the respondent and had consequently failed to make the deposit of the consideration with interest as directed by this Court in the orders, which are extracted supra. It is important to note that the writ petition is conspicuously silent in regard to the date of representation with which the original demand drafts were sought to be tendered and the date of representation with which the Photostat copies of the two demand drafts were delivered to the respondent. A perusal of the material papers would show that a copy of the letter dated 23.11.2011 addressed by petitioner to the Vice Chairman, VUDA is filed into the Court along with the writ petition where under a request regarding re-allotment of the subject plot was made. A perusal of the said letter would show that the said letter makes reference to – (i) the letter dated 10.01.1997 of the respondent; (ii) the orders of this Court dated 03.03.2011 in W.P.No.6437 of 2010; (iii) the petitioner's letter dated 13.04.2011 requesting for re-allotment; and (iv) the petitioner's letter dated 13.06.2011 requesting for re-allotment. A copy of the letter dated 13.04.2011, if any, is not filed with the writ petition though such a letter is a crucial letter. However, the letter dated 13.06.2011 filed by the writ petitioner as exhibit P4, on a perusal, would show that along with said letter, the two demand drafts dated 13.04.2011 referred to supra were submitted along with the request for re-allotment of the subject plot as early as possible. Thus, the pleadings and the material record do not support the case of the petitioner that the original demand drafts were tendered/delivered to VUDA, within the time granted by this court in W.P.No.6437 of 2010. Since the writ petitioner had failed to establish that he had complied with the orders of this Court in W.P.No.6437 of 2010 within the time allowed by this Court, the default clause which has become operative precludes the petitioner from reaping the benefits of the order of this Court. It is not out of place to note that the writ petitioner having filed a contempt case had withdrawn the same for reasons best known to him.

9. Now, it is necessary to deal with the alternative contention advanced by the learned senior counsel on behalf of the writ petitioner. The said alternative contention is as under: 'The respondent had stated in the letter dated 20.04.2012 that since two civil suits aforementioned are pending in respect of the subject plot and that therefore, the orders of this Court in W.P.No.6437 of 2010 could not be implemented and that the case of the petitioner would be considered after the disposal of the abovementioned civil cases. The respondent had agreed to reallocate the plot and execute the sale deed even though the amount is not deposited by the petitioner within the time allowed by this Court in view of the fact that the two civil suits are pending in the courts at Visakhapatnam. In view of the said stand taken by the respondent, the petitioner is entitled to the relief claimed in the writ petition assuming for a moment that he is not entitled to reap the benefit of the order of this Court in W.P.No.6437 of 2010 for non-deposit of the amount within the time allowed by this Court.' In support of the said alternate contention reliance was placed on the contents of the letter dated 20.04.2012, wherein the respondent had stated as follows:-

“In the reference 2nd cited, you have given your willingness to withdraw the above contempt petition, requesting a communication from VUDA on this matter.

As informed to you earlier about OS. 221/2010 and IA. 897/2010 in OS. 221/2010 pending before the Hon'ble Court of the 6th Additional District Judge at Visakhapatnam and OS. 937/2010 which is pending before the Hon'ble Court of the 4th Additional Junior Civil Judge at Visakhapatnam in respect of the Plot No.LIG-43/1, M.V.P. Layout, the Hon'ble High Court orders could not be implemented. As agreed by you, your case will be considered after the disposal of the above mentioned cases.”

10. However, the learned Standing Counsel for the respondent would contend that when the writ petitioner is a defaulter, having not deposited the amount within the time allowed by this Court, he cannot take advantage of the alleged offer said to have been made by the respondent for the following among other contentions. **Firstly**, the petitioner having not deposited the amount within the time allowed by this Court and having suppressed the material facts in his writ petition is not entitled to any relief. **Secondly**, the writ petitioner had not produced any evidence as regards the stage of the

aforementioned suits and could not establish that the said civil suits have been finally disposed of in favour of the respondent. **Thirdly**, the writ petitioner, who is a defaulter and who is not entitled to reap the benefits of the order of this Court, cannot lay a claim to the plot by offering to pay the consideration which was directed to be paid by this Court, by order dated 03.03.2011 as by now, the value of the property had increased multi-fold. **Fourthly**, after the S.A. no. 106 of 2006 was disposed of and the then earlier pending litigation has come to an end, even as on March 2010, the respondent had demanded the petitioner to pay consideration at the rate of Rs.28,000/- per square yard, subject to confirmation of the actual extent as per the ground position and hence, the petitioner cannot claim the plot by offering to pay the original consideration of Rs.5,10,468/- with interest. **Lastly**, the respondent had stated in its letter that the case of the petitioner would be considered after the disposal of the above mentioned suits, but did not make an offer or promise that the plot will be re-allotted on the original consideration.

11. Now the short question is as to whether in view of the extracted contents of the above said letter, the writ petitioner can be granted the relief as sought for in this writ petition.

12. The petitioner had failed to produce any evidence to show that the two civil suits aforementioned have attained finality and were disposed of finally in favour of the respondent and that the subject plot is now clear from any litigation whatsoever. Be that as it may, the original allotment of the plot is only a tentative allotment made in the year 1996 and the original consideration fixed at that time was Rs.5,10,468/-. In the orders dated 03.03.2011 of this Court in W.P.No.6437 of 2010, the cost of the plot which was directed to be paid by the petitioner to the respondent was the original sale consideration of Rs.5,10,468/- with interest at the rate of 12% per annum from 10.01.1997. Even by that date, the VUDA was unwilling to execute the sale deed at that cost as the cost of the plot as per the submissions of the respondent was Rs.28,000/- per square yard even by March 2010. Even by that time also, the VUDA was willing to execute the sale deed in respect of the

subject plot in favour of the petitioner provided the petitioner was willing and prepared to pay the consideration at the rate of Rs.28,000/- per square yard and on his undertaking that he will not implicate VUDA in any litigation. However, the petitioner who was not prepared to pay the consideration as demanded by the VUDA had filed the writ petition. Since the petitioner was denied the benefit of enjoying the property in view of the then pending litigation and considering the fact that he would have been the beneficiary of the escalation of the price also, this Court, while not accepting the demand of the VUDA that the petitioner is required to pay the cost of the plot at prevailing market rate, i.e., at the rate of Rs.28,000/- per square yard, had permitted the writ petitioner to pay the original sale consideration of Rs.5,10,468/- with interest from 10.01.1997 at the rate of 12% per annum. Thus, on equitable considerations, this Court had permitted the petitioner to reap the benefits of the writ order by making it manifest that the deposit as directed shall be made within four weeks from the date of the receipt of the copy of the order. However, the petitioner had failed to produce the required standard of evidence to establish that the deposit with interest was made within the time allowed by this Court. Thus, the petitioner is now has become disentitled to reap the benefit of the order of this Court. Further, the petitioner had failed to prove that the suits O.S.No.221 of 2010 and O.S.937 of 2010 have attained finality and that the said litigations had ended in favour of the respondent. The petitioner being a defaulter is now not entitled to the re-allotment of the plot and the execution of the sale deed in his favour on payment of the original consideration fixed in the year 1997, which is far less than the present market value. Finally, as rightly contended by the learned Standing Counsel for the respondent, no unconditional offer or promise was made by the respondent, but it was only stated by the respondent that the case of the petitioner will be considered after the disposal of the suits.

13. The exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a writ is not issued as of right or as a matter of course. **(Vide C.R.Reddy Law College Employees' Association, Eluru, West**

Godavari District v. Bar Council of India, New Delhi)^[1]. Having regard to the reasons, this Court finds no acceptable merit in the alternative contentions advanced on behalf of the writ petitioner. Having regard to the facts of the case, this Court finds no reason to exercise discretion under Article 226 of the Constitution of India in favour of the petitioner. Accordingly, this Court finds that in the facts and circumstances of the case, the petitioner is not entitled to the reliefs claimed in this writ petition.

14. In the result, the Writ Petition is dismissed, however, in the facts and circumstances of the case without costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SEETHARAMA MURTI, J

31.12.2015
BVV

^[1] 2004(5) ALD 180 (D.B)